

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JUDITH LEE GARDNER,
ROBERT MICHAEL GARDNER, and
DONALD REMBOSKI

Appeal 2007-2821
Application 09/976,989
Technology Center 3600

Decided: October 17, 2007

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and ANTON W.
FETTING, *Administrative Patent Judges*.

OWNES, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal from a rejection of claims 1-41, which are all of the pending claims.

THE INVENTION

The Appellants claim a method and apparatus for improving vehicle driver performance. Claim 1 is illustrative:

1. A method of improving driver performance through performance feedback; the method comprising the steps of:

receiving vehicle operating data from the vehicle relating to the vehicle operating condition;

monitoring an interior portion of the vehicle and receiving operator activity data from the interior portion of the vehicle relating to activities of the operator within the interior portion;

receiving vehicle environment data from the environment external to the vehicle;

monitoring the vehicle operator and receiving operator condition data relating to a condition of the vehicle operator;

recording an operator performance assessment based on the vehicle operating data, the operator activity data, the vehicle environment data and the operator condition data, the operator performance assessment being a score assessing the ability of the operator to operate the vehicle relative to known good practices; and

reporting the operator performance assessment to the operator for improving driving performance.

THE REFERENCES

McMillan	US 5,797,134	Aug. 18, 1998
Kubota	US 6,249,720 B1	Jun. 19, 2001
Lemelson	US 6,487,500 B2	Nov. 26, 2002

(effective filing date on or before Sep. 24, 1996)

THE REJECTIONS

The claims stand rejected as follows: claims 1, 3-22, and 24-39 under 35 U.S.C. § 102(e) as anticipated by Kubota;¹ claim 2 under 35 U.S.C. § 103 as obvious over Kubota in view of McMillan; claim 23 under 35 U.S.C. § 103 as obvious over Kubota in view of Lemelson; and claim 40 under 35 U.S.C. § 112, first paragraph, written description requirement.²

¹ The Examiner does not include or discuss in the Examiner's Answer the rejection of claims 40 and 41 under 35 U.S.C. § 102(e) over Kubota (final rejection mailed Nov. 12, 2004, pp. 2-3). We therefore consider the rejection under 35 U.S.C. § 102(e) to be withdrawn as to those claims.

² The Examiner does not include the rejection of claim 40 under 35 U.S.C. § 112, first paragraph, in the statement of the rejections in the Examiner's Answer, but the Examiner's Answer includes a response to the Appellants' argument regarding that rejection (Ans. 9). Hence, we consider the rejection of claim 40 under 35 U.S.C. § 112, first paragraph, to be maintained by the Examiner.

OPINION

We reverse the aforementioned rejections.

Rejections under 35 U.S.C. §§ 102(e) and 103

The Examiner has the initial burden of establishing a prima facie case of anticipation by pointing out where all of the claim limitations appear in a single reference. *See In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); *In re King*, 801 F.2d 1324, 1327, 231 USPQ 136, 138-39 (Fed. Cir. 1986).

The Appellants' independent claim 1 requires an "operator performance assessment being a score assessing the ability of the operator to operate the vehicle relative to known good practices", and claim 31, the Appellants' only other independent claim, requires an "operator performance assessment value being a score assessing the ability of the operator to operate the vehicle relative to known good practices". For a disclosure of those claim requirements the Examiner relies upon Kubota's column 7, lines 40-56 and column 9, lines 8-27, particularly column 9, lines 10-28 (Ans. 3, 7).

Kubota discloses "a device mounted in a vehicle which allows one or more of personified agent or imaginary living body to appear before a driver or passengers in the vehicle for communication therewith" (col. 1, ll. 43-46). Kubota's column 7, lines 40-56 disclose that study item data is stored in a portable memory medium. Kubota's column 9, lines 11-22 are as follows:

For example, push of a brake pedal to an extent greater than a predetermined level is regarded as a key operation, in response to which the agent may fall on his or her behind, take several steps

backward, keep his or her foot, cries in surprise, etc. These responsive activities may be changed by the agent's study of sudden braking operation. For example, the program determines that the agent falls on his or her behind at the first to third times of sudden braking operation, takes several steps backward at the fourth to tenth times, and keeps his or her foot thereafter. Such program represents that the agent becomes experienced and accustomed to the driver's sudden braking operation.

The Examiner argues (Ans. 7-8):

Kubota et al. discloses on lines 10-28, on column 9, that the agent figure will stumble and fall when the driver brakes harder than what would be considered normal. The agent also takes into account the driver's past performance and if the driver has a habit of braking harder than what is considered normal it will learn to ignore the hard braking and not fall over. Hence, the assessment starts with a normal base rating and changes as the habit of the driver is taken into consideration. This meets the limitation of "known good practices" as the term is interpreted from the specification.

Thus, the Examiner considers Kubota's predetermined braking level to be a normal braking level. Kubota, however, does not indicate that the predetermined level is anything more than an arbitrary level, let alone indicates that it corresponds to known good practices. If anything, Kubota's disclosure that the agent adjusts to the driver's braking harder than the predetermined level (col. 9, ll. 15-22) indicates that the predetermined level is not a good practices level.

Thus, the Examiner has not established a prima facie case of anticipation of the invention claimed in the Appellants' claims 1, 3-22, and 24-39. With respect to claims 2 and 23 the Examiner has not explained why the above-discussed claim

requirements would have been rendered obvious to one of ordinary skill in the art by Kubota or Kubota in combination with the other applied references.

We therefore reverse the rejections under 35 U.S.C. §§ 102(e) and 103.

Rejection under 35 U.S.C. § 112, first paragraph

Claim 40, which depends from claim 1, recites “wherein known good practices comprises information on driving performance of a normal population, previously identified good driving performance or good habitual driving behavior.

The Examiner argues (Ans. 9):

While the specification does mention “good habits”, this does not translate into disclosing good habitual driving behavior. An example of a good habit can [be] using your turn signal, habitual behavior is a measure of a driver always using their turn signal. There is a strong difference.

The strong difference argued by the Examiner between using a turn signal as a good habit and always using a turn signal as habitual behavior is not apparent. A habit is “a settled tendency or usual manner of behavior”.³ Because a habit is a behavior, the “good habits” disclosed in the Appellants’ Specification (Spec. 30-30) appear to be good habitual behavior as recited in the Appellants’ claim 40.

Hence, we reverse the rejection of claim 40 under 35 U.S.C. § 112, first paragraph.

³ *Webster’s New Collegiate Dictionary* 514 (G. & C. Merriam 1973).

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DECISION

The rejections of claims 1, 3-22, and 24-39 under 35 U.S.C. § 102(e) over Kubota, claim 2 under 35 U.S.C. § 103 over Kubota in view of McMillan, claim 23 under 35 U.S.C. § 103 over Kubota in view of Lemelson, and claim 40 under 35 U.S.C. § 112, first paragraph, written description requirement, are reversed.

REVERSED

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